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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

ALBANY HOUSING ADVOCATES et al., Plaintiffs and Appellants, v. CITY OF ALBANY et al., Defendants and Respondents.	A144699 (Alameda County Super. Ct. No. RG13697761)

The online Oxford English Dictionary defines both "moot" and "mootness" as "the fact of having no practical significance or relevance," and it further defines "moot" as "uncertain, doubtful; unable to be firmly resolved" because the point at issue is "abstract, academic." (Oxford English Dict. Online (2016) <http://www.oed.com/view/Entry/122029?redirectedFrom=mootness#eid>; [as of May 27, 2016].) In California legal circles, the emphasis is on the impacts of practical reality: a case is treated as moot if a court cannot grant "effective relief" to the aggrieved party. (E.g., *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *DeSilva Gates Construction LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1416; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 32, p. 98; 9 Witkin, Appeal, § 749, pp. 814-815.)

Two of the most common causes of mootness are change in the material circumstances (e.g., *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574) or change in the governing law. (9 Witkin, *supra*, Appeal,

§ 754, p. 820.) Here the conclusion of mootness emerges as the result of municipal action that removes the chosen litigation target from the reach of the reviewing court. And because mootness is shown, " 'the court will not proceed . . . , but will dismiss the appeal.' " (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind*, *supra*, 67 Cal.2d 536, 541.)

BACKGROUND

The Legal Framework

The Housing Accountability Act (Gov. Code, §§ 65580-65589.8[1]), also known as the "Housing Element Law," was enacted in 1980 to address a long-standing problem. As the Supreme Court described in *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 444–446:

"Nearly 50 years ago, the California Legislature enacted a broad measure requiring all counties and cities in California to 'adopt a comprehensive, long-term general plan for the physical development of the county or city.' (Gov. Code, § 65300 et seq., enacted by Stats.1965, ch. 1880, § 5, pp. 4334, 4336, operative Jan. 1, 1967.) Each municipality's general plan is to contain a variety of mandatory and optional elements, including a mandatory housing element consisting of standards and plans for housing sites in the municipality that 'shall endeavor to make adequate provision for the housing needs of all economic segments of the community.' (Gov. Code, former § 65302, subd. (c), as amended by Stats. # 1967, ch. 1658, § 1, p. 4033; see now Gov. Code, § 65580.)

"A little more than a decade later, in 1980, declaring (1) that '[t]he availability of housing is of vital statewide importance,' (2) that 'the early attainment of decent housing and a suitable living environment for every Californian . . . is a priority of the highest order,' (3) that '[t]he early attainment of this goal requires the cooperative participation of government and the private sector in an effort to expand housing opportunities and accommodate the housing needs of Californians of all economic levels,' and (4) that '*[l]ocal and state governments have a responsibility to use the powers vested in them to*

[1] statutory references are to this code unless otherwise indicated

facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community' (Gov. Code, § 65580, subds. (a), (b), (d), italics added), the Legislature enacted a separate, comprehensive statutory scheme that substantially strengthened the requirements of the housing element component of local general plans. (Gov. Code, §§ 65580–65589, enacted by Stats.1980, ch. 1143, § 3, pp. 3697–3703.) The 1980 legislation . . . sets forth in considerable detail a municipality's obligations to analyze and quantify the locality's existing and projected housing needs for all income levels, including the locality's share of the regional housing need as determined by the applicable regional ' "[c]ouncil of governments" ' (Gov. Code, § 65582, subd. (b)), and to adopt and to submit to the California Department of Housing and Community Development a multiyear schedule of actions the local government is undertaking to meet these needs. (*Id*., §§ 65583–65588.) In particular, the legislation requires a municipality, '[i]n order to make adequate provision for the housing needs of all economic segments of the community, . . . [to] [¶] [i]dentify actions that will be taken to make sites available during the planning period . . . with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level' (Gov. Code, § 65583, subd. (c)(1)) and to '[a]ssist in the development of adequate housing to meet the needs of extremely low, very low, low-, and moderate-income households.' (*Id.*, subd. (c)(2).)

"In addition to adopting the Housing Element Law, the Legislature has enacted a variety of other statutes to facilitate and encourage the provision of affordable housing, for example, prohibiting local zoning and other restrictions that preclude the construction of affordable housing units (see, e.g., Gov. Code, §§ 65913.1 [least cost zoning law], 65589.5 [Housing Accountability Act]), and requiring local governments to provide incentives, such as density bonuses, to developers who voluntarily include affordable housing in their proposed development projects. (Gov. Code, § 65915.) . . .

"Although to date the California Legislature has not adopted a statewide statute that requires every municipality to adopt a mandatory inclusionary housing ordinance if

needed to meet the municipality's obligations under the Housing Element Law, in recent decades more than 170 California cities and counties have adopted such inclusionary housing ordinances in an effort to meet such obligations. [Citations.] The provisions and legislative history of the affordable housing statutes make it clear that the California Legislature is unquestionably aware of these numerous local mandatory inclusionary housing ordinances and that the existing state legislation is neither inconsistent with nor intended to preempt these local measures."

The Housing Element Law required each local government to adopt a "housing element" as a component of its general plan. (§§ 65580, subd. (a), 65581, subd. (b), 65582, subd. (b).) The housing element is required to contain an "assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs," which is in turn required to include: (1) an "analysis of population and employment trends and . . . projected housing needs for all income levels"; (2) an "inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment"; and (3) the identification of "sites that can be developed for housing . . . and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels." (§§ 65583, subd. (a), 65583.2, subd. (a), 65584, subd. (b).) Each local government is required to periodically review and, if appropriate, revise, its housing element. (§ 65588.)

The Department of Housing and Community Development (HCD) has the statutory responsibility of promulgating guidelines local governments shall consider when preparing housing elements, and for reviewing draft elements or amendments to existing elements. (§ 65585, subds. (a), (b).) In making that review, and in preparing written findings to the local government, the HCD "shall determine whether the draft element or draft amendment substantially complies with the requirements" of the Housing Element Law. (*Id*., subds. (b), (d).) "Prior to the adoption of its draft element or draft amendment, the legislative body [of the local government] shall consider the findings made by [HCD]." (*Id*., subd. (e).) The local legislative body may then "[c]hange the draft element or draft amendment to substantially comply with the

requirements" of the Housing Element Law, or "[a]dopt the draft element or draft amendment without changes" if the legislative body provides "written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of [the Housing Element Law] despite the findings of [HCD]." (*Id.*, subd. (f).)

But what if the local government evades complying with the Housing Element Law by simply doing nothing, or next to nothing?

The Present Litigation

The Housing Element Law authorizes "any interested party" to prosecute an action for a writ of traditional mandate pursuant to Code of Civil Procedure section 1085 "to review the conformity . . . of any housing element or portion thereof or revision thereto," and "to compel compliance with the deadlines and requirements . . . of Section 65583." (§ 65587, subds. (b), (d)(2).) That is what occurred in October 2013.

In October 2013, a petition for that writ, together with declaratory and injunctive relief, was filed against the City of Albany and its city council (hereafter collectively "the City") by two named persons who described themselves as "homeless" individuals; they were joined by Albany Housing Advocates (hereafter collectively "plaintiffs"), which described itself as "a nonprofit corporation dedicated to the production of affordable housing in the City of Albany for all income categories . . . . Its specific mission is to . . . ensure the City's compliance with fair housing and housing element requirements."

Plaintiffs initially alleged that the City "has not updated its Housing Element since 1992. It took no steps to update its Housing Element for the 1999-2006 planning period. In or around July 2009, the City submitted an incomplete draft Housing Element to HCD for the 2007-2014 planning period. Because the draft was incomplete, HCD did not formally review the draft. It issued written technical advice . . . highlighting serious problems with the chapters the City submitted. From July 2009 until earlier this year, the City did nothing to address the deficiencies noted by HCD or to adopt an updated Housing Element." Through this inaction, "the City failed to plan for more than 553 units of housing affordable to very low-, low-, moderate-, and above moderate-income

households," and "failed to identify and/or rezone adequate sites to accommodate its regional housing need" from 1999 onwards.

Plaintiffs filed an "amended and supplemental petition" in June 2014. In their amended petition, plaintiffs alleged that "[the City] finally adopted a housing element in March 2014, and after its statutorily mandated review, . . . [HCD] found that the element substantially complies with state law." Nevertheless, according to plaintiffs, "the City has documented unmet regional housing needs from the *prior* planning period that must be carried over into the current planning period"; because there was no such carryover, the new housing element was "inadequate, violates the statutory carryover obligations, and constitutes illegal discrimination under the state fair housing laws."

Plaintiffs initially alleged: "The outstanding regional housing needs of the prior planning period carry over into the current planning period under Gov. Code § 65584.09. [The City] was required to complete any necessary rezoning to accommodate its carryover of 277 units by June 30, 2010,[2] one year after the deadline for it to adopt its Housing Element for the current 2007-2014 planning period. [¶] . . . Unless the City

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[2] Plaintiffs originally computed this figure as comprising 64 units of "very low" income; 33 units for "low" income; 77 units for "moderate" income; and 103 units for "above moderate" income.

In their amended petition, plaintiffs alleged that the City had submitted a draft of its proposed housing element to HCD "in or around July 2009." "Because the draft was incomplete, HCD did not formally review the draft. It issued written technical advice . . . highlighting serious problems with the incomplete element the City submitted. . . . [¶] . . . From July 2009 until September 2013, the City did nothing to address the deficiencies noted by HCD, and continued to fail to adopt an updated Housing Element." After the City "released another incomplete draft element," "HCD issued a letter on December 26, 2013 to [the City] requesting significant revisions to the October 2013 draft element." "After making some revisions . . . , the City Council adopted a 'final' housing element on March 3, 2014, which concludes that the City has no carryover obligation for the last planning period. The City submitted the adopted element to HCD for review on or about March 6, 2014." "HCD issued a determination on June 3, 2014 stating simply that the adopted Housing Element is in compliance with state Housing Element Law. HCD did not specify why it found the Housing Element in compliance, nor did it make any findings as to whether the City complied with its carryover obligations."

can demonstrate that 277 units were constructed to meet its RHNA [Regional Housing Needs Allocation] for 1999-2006, it remains obligated to identify and rezone adequate sites to accommodate its RHNA totaling 277 units." Moreover, "state law requires cities to add to its total RHNA for the current planning period the unmet housing need for 1999-2006 pursuant to Gov. Code § 65584.09. Therefore, [the City] is obligated to plan for a minimum of 553 units affordable to very low-, low-, moderate-, and above moderate-income households."[3]

In their amended petition, plaintiffs alleged that in the latest housing element, the City concluded it "has no carryover obligation for the last planning period," which in turn included another "carryover obligation" from the 1999-2006 period. Thus, "the City failed to accommodate at least 154 units of housing affordable to very low-, low-, and moderate-income households."[4]

Plaintiffs' extensive prayer for relief ran as follows:

"1. A peremptory writ of mandate commanding the City . . .

"2. Pursuant to Gov. Code § 65754, adopt, within 120 days, a Housing Element for the 2007-2014 planning period that actually and substantially complies with state law.

"3. Pursuant to Gov. Code § 65584.09, to zone or rezone adequate sites to accommodate the City's unmet share of the regional housing needs allocation from the 1999-2006 planning period, which zonings shall be in addition to those necessary to accommodate the City's share of the regional housing need for the 2007-2014 planning period.

"4. For a peremptory writ of mandate and/or preliminary and permanent injunctive relief prohibiting the City and its City Council and their officers, employees,

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[3] The 276 additional units were calculated by plaintiffs as comprising 64 units for "very low" income; 43 units for "low" income; 52 units for "moderate" income; and 117 units for "above moderate" income.

[4] Plaintiffs divided the 154 equally between lower-income and moderate-income households. At a later point in the amended petition, plaintiffs alleged that the new housing element had "73 unmet lower income regional housing needs (57 very low and 16 low-income)."

agents, and representatives, until the City complies with the preceding requirements, from:

"a. Issuing building permits for, or otherwise approving any construction or development, except housing units affordable to very low- and low-income households . . . except as provided in Gov. Code § 65755(b); and

"b. Granting zoning changes or variances, or subdivision map approvals, except as provided in Gov. Code § 65755(b), and except as to housing units affordable to very low, low and moderate income households . . . .

"[5.] For a preliminary and permanent injunction enjoining Respondents from all actions that would deprive Petitioners and others in need of affordable housing in Albany of their right to be free of illegal discrimination.

"[6.] For a declaration that:

"a. Respondents have failed to adopt a Housing Element for the 2007-2014 planning period that substantially complies with Housing Element Law;

"b. Respondents have an unaccommodated need of 154 lower income units (59 very low-, 18 low-, and 77 moderate income) for the 1999-2006 planning period.

"c. Respondents have failed to zone or rezone adequate sites to accommodate the City's unmet share of 154 lower income housing needs allocated to it for the 1999-2006 planning period as required by Govt. Code § 65584.09.

"d. Respondents have failed to comply with their mandatory legal duties set forth in Housing Element Law; and

"e. Respondents' failure to comply with their legal obligations has an unlawful discriminatory effect on Petitioners and therefore violates Gov. Code §§ 12900 et seq. and 65008.

"[7.] For an award to Petitioners of their costs of suit;

"[8.] For an award to Petitioners of their reasonable attorneys' fees; and

"[9.] For such other and further relief as the Court deems just and proper."

Plaintiffs framed five causes of action in their petition, but only two went to trial. Those two were the first and the second, respectively styled "Writ of Mandate to Compel

the Preparation and Adoption of a Legally Sufficient Housing Element for the 2007-2014 planning period," and "Failure to Make Adequate Sites Available to Accommodate the Unmet Need for Affordable Housing from the 1999-2006 planning period."

The Trial Court's Judgment

The matter was decided by the Honorable Evelio Grillo on the basis of papers, extensive exhibits, and argument. The central focus of Judge Grillo's 15-page order is the impact of section 65584.09, which all refer to as the "carryover statute," and which is set out in the margin.[5] After a detailed examination of the statutory language, its history, and its construction by HCD, Judge Grillo concluded that although the City "failed to prepare a housing element for the 1999-2006 planning period and therefore failed to identify adequate sites during that planning period," it did not follow that plaintiffs would prevail:

"The court will not read . . . Gov. Code § 65584.09 (a) to mean that when a city has failed to prepare a housing element in the prior planning period, then the city must zone or rezone to provide its entire RHNA allocation without regard to whether in the

[5] "(a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

"(b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.

"(c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need."

prior planning period the city actually had existing sites that met part or all of the prior RHNA allocation. Although perhaps not an 'absurd result,' this would be a result that is contrary to the stated legislative purpose and the interpretation of the statute by the enforcing agency."

"The City's housing element for the 2007-2014 period addresses the City's obligations under the Carryover Statute's remedy phrase. The HCD approved the City's housing element and proposed amendment to its general plan, which created a presumption that the plan complied with the statute's remedy phrase. (Gov. Code § 65589.3.) The Housing Element has a section captioned 'Review of Previous Housing Element' that sets out the requirements of the Carryover Statute, sets out the City's 1999-2006 RHNA, states what lower income housing was actually constructed in the City during 1999-2006 and explains in detail on a site by site basis the circumstances of each site. . . . In addition to the presumption of compliance, the stated facts and analysis demonstrate substantial compliance. [Citation.] The evidence demonstrates that although the City had no housing element in the prior planning period there nevertheless were no unaccommodated portions of the RHNA during the prior planning period. Therefore, the City's housing element for the 2007-2014 planning period substantially complies with the requirements of the Carryover Statute . . . ."

It is from the ensuing judgment denying their petition that plaintiffs perfected this timely appeal.

Stating the Problem

In the ordinary case, our review would follow an established course: "A housing element may be challenged by 'any interested party' through a traditional mandamus action under Code of Civil Procedure section 1085. (§§ 65587, subds.(b), (d)(2), 65583, subd. (h).) The court's review 'shall extend to whether the housing element . . . substantially complies with the requirements of [the housing element law].' (§ 65587, subd. (b).) 'Judicial review of a housing element for substantial compliance with the statutory requirements does not involve an examination of the merits of the element or of the wisdom of the municipality's determination of policy." [Citation.]

Instead, it requires a determination whether the housing element includes the statutory requirements. [Citation.]" (*Haro v. City of Solana Beach* (2011) 195 Cal.App.4th 542, 550.)

The City has made no attempt to refute Judge Grillo's conclusion that the 1999-2006 housing element was legally deficient. If this were the usual case, we would examine whether Judge Grillo correctly concluded that the City was in compliance with the Housing Element Law following adoption of the 2007-2014 housing element. In that document the City concluded that it had built more units (343) than its RHNA figure (277), thus giving it a net of 66 units, even if at least two of the four income categories were unsatisfied.[6] Nevertheless, the City reasoned there was no carryover because it could "demonstrate that it had the capacity to accommodate these 73 lower income units" for the 1999-2006 period. This conclusion was endorsed by Judge Grillo. But events are in the saddle.

Why This Appeal Is Moot

During the pendency of this appeal, the City asked that we take judicial notice of two events that occurred in February 2015. The first was the passage of Resolution No. 2015-6, whereby the Albany City Council adopted a new housing element for the period 2015 through 2022. The second was HCD's conclusion that this housing element was " 'in full compliance with State housing element law.' " Without opposition from plaintiffs, we granted the request for judicial notice.

In the new housing element, the City stated that its RHNA "for the prior (1999-2006) period was 276 units," comprised of "64 units of very low income housing, 43 units of low income housing, 52 units of moderate income housing, and 117 units of above moderate income housing." "Actual housing construction during this

[6] The City acknowledged it had built only 7 of the 64 very low income units; only 17 of the 33 low income units; and only 78 of the 103 above moderate income units. However, the City believed 25 of the 241 moderate income units it had built "can also be considered affordable to above-moderate households, so there is no carryover of above-moderate income units." According to this reasoning, the City was only short 73 units (i.e., 57 very low income and 16 low income).

period . . . was a net increase of 199 units, which fell short of the RHNA by 77 units." Moreover, the City conceded: "While the total number of units added (199) was 72 percent of the RHNA, all segments of the population were not equally served. No very low income units were added and no formally designated 'affordable' units (e.g., units with maximum income restrictions on occupation) were added." The City stated its RHNA for 2014-2022 was 335 units (80 very low, 53 low, 57 moderate, and 145 above moderate), 10 of which were "committed," meaning underway. An inventory of "housing opportunities for the 2015-2023 planning period . . . indicates the capacity for 448 additional units," further "indicating the City has sufficient site capacity to meet its RHNA."

The City contends that mootness is plain. "[Plaintiffs'] First Cause of Action sought a writ of mandate compelling Albany to revise its 2007-2014 Housing Element Update to reflect [plaintiffs'] understanding of Albany's obligations under the Carryover Statute for the 1999-2006 planning period, and to commit Albany to a strategy for addressing those alleged obligations. The 2007-2014 Housing Element Update is no longer part of the General Plan governing land use in Albany, however, because Albany has updated the Housing Element of its General Plan further, bringing the Housing Element current for the 2015-2022 planning period. Although [plaintiffs'] First Cause of Action was not moot when the trial court ruled, it is moot now. [¶] . . . [¶] Even if this Court agreed with [plaintiffs] that Albany's 2007-2014 Housing Element Update had misstated Albany's obligations under the Carryover Statute, [this Court] could not grant effective relief to [plaintiffs] on the First Cause of Action because the 2007-2014 Housing Element Update is no longer an operative part of Albany's General Plan."

According to the City, the language of section 65584.09 also establishes mootness: "[Plaintiffs'] Second Cause of Action contended, as does [plaintiffs'] Opening Brief, that regardless of the status or content of Albany's General Plan Housing Element, Albany should have rezoned land to accommodate Albany's alleged carryover obligation from the 1999-2006 planning period. . . . [T]his contention is incorrect, because sites in Albany actually zoned for and available for residential development, and identified as

such in the Housing Element of Albany's General Plan, were more than adequate to satisfy Albany's share of zoning for regional housing needs between 1999 and 2006. But even if [plaintiffs] were correct about Albany's alleged duty to rezone, Albany's duty would have been to accomplish this rezoning 'within the first year of the planning period' for 2007-2014. . . . [¶] Basing its argument on the June 30, 2009 due date for the 2007-2014 Housing Element Update, [plaintiffs argue] that Albany's rezoning deadline was on June 30, 2010—more than five years ago. If this argument were correct, [plaintiffs'] time limit for commencing any lawsuit to enforce this statutory obligation would have expired three years later, on June 30, 2013. (Code Civ. Proc., § 338, subd. (a) [setting a three-year statute of limitations for '[a]n action upon a liability created by statute'].) Because [plaintiffs] waited until October 2013 to commence its lawsuit alleging failure to satisfy the Carryover Statute . . . , [plaintiffs'] Second Cause of Action was and is untimely."[7]

A case becomes moot when "the question addressed was at one time a live issue in the case," but has lost that status "because of events occurring after the judicial process was initiated." (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120.) A host of decisions support Witkin's statement that "Repeal or modification of a statute under attack, or subsequent legislation, may render moot the issues in a pending appeal." (9 Witkin, *supra*, Appeal, § 754, p. 820.) That this principle applies equally to legislative enactments at the county level is unquestioned. One of the earliest instances came in this court. (*Equi v. San Francisco* (1936) 13 Cal.App.2d 140, 141–142 [post-judgment amendment of challenged ordinance].)

The City has made no attempt to refute Judge Grillo's conclusion that the 1999-2006 housing element was legally deficient. That being so, the legal import of subdivisions (a) and (b) of section 65584.09 was originally drawn by plaintiffs to that document and to the City's failure to replace it with a new and superseding housing element. That objective was itself superseded when the City—again with no attempt at

[7] Judge Grillo expressly declined to address "the statute of limitations issues."

justification—enacted a new housing element in March 2014. But Judge Grillo scarcely had time to examine that document before its official existence came to an end. The March 2015 enactment of the housing element for 2015-2022 not only pushed the March 2014 housing element into history, it removed one of the analytical poles considered by Judge Grillo. It would be pointless for this court to review Judge Grillo's decision in such circumstances. No effective relief could be granted were this court to conclude that Judge Grillo erred in his construction of a measure that has in plain effect been repealed.

Instead, plaintiffs would have us consider an entirely different issue. No longer would the question be the carryover impact—if any—from the housing element enacted in 1992 to the March 2014 housing element: it would now be the carryover impact from the housing element enacted in 1992 to the March 2014 housing element and then to the 2015 housing element. This is an issue never presented to, or considered by, Judge Grillo.

Plaintiffs assume that the conceded error made in 1992 is justiciable two planning periods later. However, the language of section 65584.09, subdivision (a) can be read as mandating a carryover for only one planning period. Plaintiffs further assume that their reframed issue could be decided without an augmented evidentiary showing, i.e., that the legality of the 2015 housing element could be decided by this court as a matter of law without the necessity of producing anything antedating its enactment. That is not how plaintiffs proceeded when they asked Judge Grillo to decide the legality of the 2014 housing element. Another change is that now *two* housing elements have in effect been approved by HCD. This makes HCD's interpretation of section 65584.09 seem more like an established administrative interpretation entitled to greater judicial deference. (See *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 303 and decisions cited.) Obviously, these are additional issues never put before Judge Grillo.

Plaintiffs properly point out that the mootness principle is subject to a number of exceptions. However, thanks to their voluntary dismissal, this is not a situation with claims for declaratory or injunctive relief. (E.g., *Eye Dog Foundation v. State Board of*

Guide Dogs for the Blind, *supra*, 67 Cal.2d 536, 541; *Paul v. Milk Depots, Inc*. (1964) 62 Cal.2d 129, 133; *Alternatives for California Women, Inc. v. County of Contra Costa* (1983) 145 Cal.App.3d 436, 445–446.) Nor is it a situation where other causes of action are still pending in the trial court, as was the case in *Davis v. Superior Court* (1985) 169 Cal.App.3d 1054, cited by plaintiffs. Judge Grillo decided all that plaintiffs asked, so this is not an instance where "there remain[ed] material questions for the court's determination." (E.g., *Eye Dog Foundation v. State Board of Guide Dogs for the Blind*, *supra*, at p. 541.) Thus, we are not presented with an instance where " ' "the judgment, if left unreversed, will preclude the party against whom it is rendered as to a fact vital to his rights." ' " (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1079.) Put otherwise, nothing in the judgment concerning the validity of the 2014 housing element will preclude plaintiffs from challenging the 2015 enactment.

The appeal is dismissed. The parties shall bear their respective costs of appeal.

_____
Richman, J.

We concur:

_____
Kline, P.J.

_____
Stewart, J.

A144699; *Albany Housing Advocates v. Albany*